
ENGROSSED SUBSTITUTE SENATE BILL 5431

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Highways & Transportation (originally sponsored by Senators Oke, Prentice, Horn, Haugen and Rasmussen; by request of Department of Licensing)

READ FIRST TIME 01/29/04.

1 AN ACT Relating to positive drug or alcohol test results of
2 commercial motor vehicle operators; amending RCW 46.25.010, 46.25.123,
3 and 46.25.125; reenacting and amending RCW 46.25.090; and creating a
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 promote the safety of drivers and passengers on Washington roads and
8 public transportation systems. To this end, Washington has established
9 a reporting requirement for employers of commercial drivers who test
10 positive for unlawful substances. The legislature recognizes that
11 transit operators and their employers are an asset to the public
12 transportation system and continuously strive to provide a safe and
13 efficient mode of travel. In light of this, the legislature further
14 intends that the inclusion of transit employers in the reporting
15 requirements serve only to enhance the current efforts of these
16 dedicated employers and employees as they continue to provide a safe
17 public transportation system to the citizens of Washington.

1 **Sec. 2.** RCW 46.25.010 and 1996 c 30 s 1 are each amended to read
2 as follows:

3 The definitions set forth in this section apply throughout this
4 chapter.

5 (1) "Alcohol" means any substance containing any form of alcohol,
6 including but not limited to ethanol, methanol, propanol, and
7 isopropanol.

8 (2) "Alcohol concentration" means:

9 (a) The number of grams of alcohol per one hundred milliliters of
10 blood; or

11 (b) The number of grams of alcohol per two hundred ten liters of
12 breath.

13 (3) "Commercial driver's license" (CDL) means a license issued in
14 accordance with the requirements of this chapter to an individual that
15 authorizes the individual to drive a class of commercial motor vehicle.

16 (4) The "commercial driver's license information system" (CDLIS) is
17 the information system established pursuant to the CMVSA to serve as a
18 clearinghouse for locating information related to the licensing and
19 identification of commercial motor vehicle drivers.

20 (5) "Commercial driver's instruction permit" means a permit issued
21 under RCW 46.25.060(4).

22 (6) "Commercial motor vehicle" means a motor vehicle designed or
23 used to transport passengers or property:

24 (a) If the vehicle has a gross weight rating of 26,001 or more
25 pounds;

26 (b) If the vehicle is designed to transport sixteen or more
27 passengers, including the driver;

28 (c) If the vehicle is transporting hazardous materials and is
29 required to be identified by a placard in accordance with 49 C.F.R.
30 part 172, subpart F; or

31 (d) If the vehicle is a school bus as defined in RCW 46.04.521
32 regardless of weight or size.

33 (7) "Conviction" has the definition set forth in RCW 46.20.270.

34 (8) "Disqualification" means a prohibition against driving a
35 commercial motor vehicle.

36 (9) "Drive" means to drive, operate, or be in physical control of
37 a motor vehicle in any place open to the general public for purposes of

1 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
2 46.25.120, "drive" includes operation or physical control of a motor
3 vehicle anywhere in the state.

4 (10) "Drugs" are those substances as defined by RCW 69.04.009,
5 including, but not limited to, those substances defined by 49 C.F.R.
6 40.3.

7 (11) "Employer" means any person, including the United States, a
8 state, or a political subdivision of a state, who owns or leases a
9 commercial motor vehicle, or assigns a person to drive a commercial
10 motor vehicle.

11 (12) "Gross vehicle weight rating" (GVWR) means the value specified
12 by the manufacturer as the maximum loaded weight of a single or a
13 combination or articulated vehicle, or the registered gross weight,
14 where this value cannot be determined. The GVWR of a combination or
15 articulated vehicle, commonly referred to as the "gross combined weight
16 rating" or GCWR, is the GVWR of the power unit plus the GVWR of the
17 towed unit or units.

18 (13) "Hazardous materials" has the same meaning found in Section
19 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801
20 et seq.).

21 (14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or
22 semitrailer propelled or drawn by mechanical power used on highways, or
23 any other vehicle required to be registered under the laws of this
24 state, but does not include a vehicle, machine, tractor, trailer, or
25 semitrailer operated exclusively on a rail.

26 (15) "Out-of-service order" means a temporary prohibition against
27 driving a commercial motor vehicle.

28 (16) "Positive alcohol confirmation test" means an alcohol
29 confirmation test that:

30 (a) Has been conducted by a breath alcohol technician under 49
31 C.F.R. 40; and

32 (b) Indicates an alcohol concentration of 0.04 or more.

33 A report that a person has refused an alcohol test, under
34 circumstances that constitute the refusal of an alcohol test under 49
35 C.F.R. 40, will be considered equivalent to a report of a positive
36 alcohol confirmation test for the purposes of this chapter.

37 (17) "Serious traffic violation" means:

1 (a) Excessive speeding, defined as fifteen miles per hour or more
2 in excess of the posted limit;

3 (b) Reckless driving, as defined under state or local law;

4 (c) A violation of a state or local law relating to motor vehicle
5 traffic control, other than a parking violation, arising in connection
6 with an accident or collision resulting in death to any person; and

7 (d) Any other violation of a state or local law relating to motor
8 vehicle traffic control, other than a parking violation, that the
9 department determines by rule to be serious.

10 ~~((+17+))~~ (18) "State" means a state of the United States and the
11 District of Columbia.

12 ~~((+18+))~~ (19) "Substance abuse professional" means an alcohol and
13 drug specialist meeting the credentials, knowledge, training, and
14 continuing education requirements of 49 C.F.R. 40.281.

15 (20) "Tank vehicle" means a vehicle that is designed to transport
16 a liquid or gaseous material within a tank that is either permanently
17 or temporarily attached to the vehicle or the chassis. Tank vehicles
18 include, but are not limited to cargo tanks and portable tanks.
19 However, this definition does not include portable tanks having a rated
20 capacity under one thousand gallons.

21 ~~((+19+))~~ (21) "United States" means the fifty states and the
22 District of Columbia.

23 (22) "Verified positive drug test" means a drug test result or
24 validity testing result from a laboratory certified under the authority
25 of the federal department of health and human services that:

26 (a) Indicates a drug concentration at or above the cutoff
27 concentration established under 49 C.F.R. 40.87; and

28 (b) Has undergone review and final determination by a medical
29 review officer.

30 A report that a person has refused a drug test, under circumstances
31 that constitute the refusal of a federal department of transportation
32 drug test under 49 C.F.R. 40, will be considered equivalent to a report
33 of a verified positive drug test for the purposes of this chapter.

34 **Sec. 3.** RCW 46.25.123 and 2002 c 272 s 1 are each amended to read
35 as follows:

36 (1) All medical review officers or breath alcohol technicians hired
37 by or under contract to a motor carrier or employer who employs drivers

1 who operate commercial motor vehicles and who is required to have a
2 testing program conducted under the procedures established by 49 C.F.R.
3 ((382)) 40 or to a consortium the carrier or employer belongs to, as
4 defined in 49 C.F.R. ((382.17)) 40.3, shall report the finding of a
5 commercial motor vehicle driver's ((confirmed)) verified positive drug
6 test or positive alcohol confirmation test to the department of
7 licensing on a form provided by the department. If the employer is
8 required to have a testing program under 49 C.F.R. 655, a report of a
9 verified positive drug test or positive alcohol confirmation test must
10 not be forwarded to the department under this subsection unless the
11 test is a pre-employment drug test conducted under 49 C.F.R. 655.41 or
12 a pre-employment alcohol test conducted under 49 C.F.R. 655.42.

13 (2)(a) A motor carrier or employer who employs drivers who operate
14 commercial motor vehicles and who is required to have a testing program
15 conducted under the procedures established by 49 C.F.R. 40, or the
16 consortium the carrier or employer belongs to, must report a refusal by
17 a commercial motor vehicle driver to take a drug or alcohol test, under
18 circumstances that constitute the refusal of a test under 49 C.F.R. 40
19 and where such refusal has not been reported by a medical review
20 officer or breath alcohol technician, to the department of licensing on
21 a form provided by the department.

22 (b) An employer who is required to have a testing program under 49
23 C.F.R. 655 must report a commercial motor vehicle driver's verified
24 positive drug test or a positive alcohol confirmation test if the
25 driver's employment has been terminated and any grievance process that
26 may have been invoked has been concluded.

27 (3) Motor carriers, employers, or consortiums shall make it a
28 written condition of their contract or agreement with a medical review
29 officer or breath alcohol technician, regardless of the state where the
30 medical review officer or breath alcohol technician is located, that
31 the medical review officer or breath alcohol technician is required to
32 report all Washington state licensed drivers who have a ((confirmed))
33 verified positive drug test or positive alcohol confirmation test to
34 the department of licensing within three business days of the
35 ((confirmed-test)) verification or confirmation. Failure to obtain
36 this contractual condition or agreement with the medical review officer
37 or breath alcohol technician by the motor carrier, employer, or

1 consortium, or failure to report a refusal as required by subsection
2 (2) of this section, will result in an administrative fine as provided
3 in RCW 46.32.100 or 81.04.405.

4 (4) Substances obtained for testing may not be used for any purpose
5 other than drug or alcohol testing under 49 C.F.R. ((382)) 40.

6 **Sec. 4.** RCW 46.25.125 and 2002 c 272 s 2 are each amended to read
7 as follows:

8 (1) When the department of licensing receives a report from a
9 medical review officer ~~((or)),~~ breath alcohol technician, employer,
10 contractor, or consortium that ~~((the holder of a commercial driver's~~
11 ~~license))~~ a driver has a ~~((confirmed))~~ verified positive drug test or
12 positive alcohol confirmation test, ~~((either))~~ as part of the testing
13 program ~~((required by))~~ conducted under 49 C.F.R. ~~((382 or as part of~~
14 ~~a preemployment drug test))~~ 40, the department shall disqualify the
15 driver from driving a commercial motor vehicle under RCW 46.25.090(7)
16 subject to a hearing as provided in this section. The department shall
17 notify the person in writing of the disqualification by first class
18 mail. The notice must explain the procedure for the person to request
19 a hearing.

20 (2) A person disqualified from driving a commercial motor vehicle
21 for having a ~~((confirmed))~~ verified positive drug test or positive
22 alcohol confirmation test may request a hearing to challenge the
23 disqualification within twenty days from the date notice is given. If
24 the request for a hearing is mailed, it must be postmarked within
25 twenty days after the department has given notice of the
26 disqualification.

27 (3) The hearing must be conducted in the county of the person's
28 residence, except that the department may conduct all or part of the
29 hearing by telephone or other electronic means.

30 (4) For the purposes of this section, or for the purpose of a
31 hearing de novo in an appeal to superior court, the hearing must be
32 limited to the following issues: (a) Whether the driver is the person
33 who ~~((took the drug or alcohol test))~~ is the subject of the report; (b)
34 whether the motor carrier, employer, or consortium has a program that
35 ~~((meets))~~ is subject to the federal requirements under 49 C.F.R.
36 ~~((382))~~ 40; and (c) whether the medical review officer or breath
37 alcohol technician making the report accurately followed the protocols

1 (~~for testing~~) established to (~~certify~~) verify or confirm the
2 results, or if the driver refused a test, whether the circumstances
3 constitute the refusal of a test under 49 C.F.R. 40. Evidence may be
4 presented to demonstrate that the test results are a false positive.
5 For the purpose of a hearing under this section, a copy of (~~the~~) a
6 positive test result with a declaration by the tester or medical review
7 officer or breath alcohol technician stating the accuracy of the
8 laboratory protocols followed to arrive at the test result is prima
9 facie evidence:

10 (i) Of a (~~confirmed~~) verified positive drug test or positive
11 alcohol confirmation test result;

12 (ii) That the motor carrier, employer, or consortium has a program
13 that is subject to the federal requirements under 49 C.F.R. 40; and

14 (iii) That the medical review officer or breath alcohol technician
15 making the report accurately followed the protocols for testing
16 established to verify or confirm the results.

17 After the hearing, the department shall order the disqualification
18 of the person either be rescinded or sustained.

19 (5) If the person does not request a hearing within the twenty-day
20 time limit, or if the person fails to appear at a hearing, the person
21 has waived the right to a hearing and the department shall sustain the
22 disqualification.

23 (6) A decision by the department disqualifying a person from
24 driving a commercial motor vehicle is stayed and does not take effect
25 while a formal hearing is pending under this section or during the
26 pendency of a subsequent appeal to superior court so long as there is
27 no conviction for a moving violation or no finding that the person has
28 committed a traffic infraction that is a moving violation and the
29 department receives no further report of a (~~confirmed~~) verified
30 positive drug test or positive alcohol confirmation test during the
31 pendency of the hearing and appeal. If the disqualification is
32 sustained after the hearing, the person who is disqualified may file a
33 petition in the superior court of the county of his or her residence to
34 review the final order of disqualification by the department in the
35 manner provided in RCW 46.20.334.

36 (7) The department of licensing may adopt rules specifying further
37 requirements for requesting and conducting a hearing under this
38 section.

1 (8) The department of licensing is not civilly liable for damage
2 resulting from disqualifying a driver based on a (~~confirmed~~) verified
3 positive drug test or positive alcohol confirmation test result as
4 required by this section or for damage resulting from release of this
5 information that occurs in the normal course of business.

6 **Sec. 5.** RCW 46.25.090 and 2002 c 272 s 3 and 2002 c 193 s 1 are
7 each reenacted and amended to read as follows:

8 (1) A person is disqualified from driving a commercial motor
9 vehicle for a period of not less than one year if a report has been
10 received by the department pursuant to RCW 46.25.120, or if the person
11 has been convicted of a first violation, within this or any other
12 jurisdiction, of:

13 (a) Driving a commercial motor vehicle under the influence of
14 alcohol or any drug;

15 (b) Driving a commercial motor vehicle while the alcohol
16 concentration in the person's system is 0.04 or more as determined by
17 any testing methods approved by law in this state or any other state or
18 jurisdiction;

19 (c) Leaving the scene of an accident involving a commercial motor
20 vehicle driven by the person;

21 (d) Using a commercial motor vehicle in the commission of a felony;

22 (e) Refusing to submit to a test to determine the driver's alcohol
23 concentration while driving a motor vehicle.

24 If any of the violations set forth in this subsection occurred
25 while transporting a hazardous material required to be identified by a
26 placard, the person is disqualified for a period of not less than three
27 years.

28 (2) A person is disqualified for life if it has been determined
29 that the person has committed or has been convicted of two or more
30 violations of any of the offenses specified in subsection (1) of this
31 section, or any combination of those offenses, arising from two or more
32 separate incidents. Only offenses committed after October 1, 1989, may
33 be considered in applying this subsection.

34 (3) The department may adopt rules, in accordance with federal
35 regulations, establishing guidelines, including conditions, under which
36 a disqualification for life under subsection (2) of this section may be
37 reduced to a period of not less than ten years.

1 (4) A person is disqualified from driving a commercial motor
2 vehicle for life who uses a commercial motor vehicle in the commission
3 of a felony involving the manufacture, distribution, or dispensing of
4 a controlled substance, as defined by chapter 69.50 RCW, or possession
5 with intent to manufacture, distribute, or dispense a controlled
6 substance, as defined by chapter 69.50 RCW.

7 (5) A person is disqualified from driving a commercial motor
8 vehicle for a period of not less than sixty days if convicted of or
9 found to have committed two serious traffic violations, or one hundred
10 twenty days if convicted of or found to have committed three serious
11 traffic violations, committed in a commercial motor vehicle arising
12 from separate incidents occurring within a three-year period.

13 (6) A person is disqualified from driving a commercial motor
14 vehicle for a period of:

15 (a) Not less than ninety days nor more than one year if convicted
16 of or found to have committed a first violation of an out-of-service
17 order while driving a commercial motor vehicle;

18 (b) Not less than one year nor more than five years if, during a
19 ten-year period, the person is convicted of or is found to have
20 committed two violations of out-of-service orders while driving a
21 commercial motor vehicle in separate incidents;

22 (c) Not less than three years nor more than five years if, during
23 a ten-year period, the person is convicted of or is found to have
24 committed three or more violations of out-of-service orders while
25 driving commercial motor vehicles in separate incidents;

26 (d) Not less than one hundred eighty days nor more than two years
27 if the person is convicted of or is found to have committed a first
28 violation of an out-of-service order while transporting hazardous
29 materials required to be placarded under the Hazardous Materials
30 Transportation Act (46 U.S.C. Sec. 1801-1813), or while operating motor
31 vehicles designed to transport sixteen or more passengers, including
32 the driver. A person is disqualified for a period of not less than
33 three years nor more than five years if, during a ten-year period, the
34 person is convicted of or is found to have committed subsequent
35 violations of out-of-service orders, in separate incidents, while
36 transporting hazardous materials required to be placarded under the
37 Hazardous Materials Transportation Act, or while operating motor

1 vehicles designed to transport sixteen or more passengers, including
2 the driver.

3 (7) A person is disqualified from driving a commercial motor
4 vehicle if a report has been received by the department under RCW
5 46.25.125 that the person has received a ~~((confirmed))~~ verified
6 positive drug test or positive alcohol confirmation test ~~((either))~~ as
7 part of the testing program ~~((required by 49 C.F.R. 382 or))~~ conducted
8 under 49 C.F.R. 40 ~~((or as part of a preemployment drug test))~~. A
9 disqualification under this subsection remains in effect until the
10 person undergoes a drug and alcohol assessment by ~~((an agency certified~~
11 ~~by the department of social and health services and, if the person is~~
12 ~~classified as an alcoholic, drug addict, alcohol abuser, or drug~~
13 ~~abuser, until))~~ a substance abuse professional meeting the requirements
14 of 49 C.F.R. 40, and the person presents evidence of satisfactory
15 participation in or successful completion of a drug or alcohol
16 treatment and/or education program ~~((that has been certified by the~~
17 ~~department of social and health services under chapter 70.96A RCW))~~ as
18 recommended by the substance abuse professional, and until the person
19 has met the requirements of RCW 46.25.100. The ~~((agency making a drug~~
20 ~~and alcohol assessment under this section))~~ substance abuse
21 professional shall forward a diagnostic evaluation and treatment
22 recommendation to the department of licensing for use in determining
23 the person's eligibility for driving a commercial motor vehicle.
24 Persons who are disqualified under this subsection more than twice in
25 a five-year period are disqualified for life.

26 (8)(a) A person is disqualified from driving a commercial motor
27 vehicle for the period of time specified in (b) of this subsection if
28 he or she is convicted of or is found to have committed one of the
29 following six offenses at a railroad-highway grade crossing while
30 operating a commercial motor vehicle in violation of a federal, state,
31 or local law or regulation:

- 32 (i) For drivers who are not required to always stop, failing to
33 slow down and check that the tracks are clear of an approaching train;
- 34 (ii) For drivers who are not required to always stop, failing to
35 stop before reaching the crossing, if the tracks are not clear;
- 36 (iii) For drivers who are always required to stop, failing to stop
37 before driving onto the crossing;

1 (iv) For all drivers, failing to have sufficient space to drive
2 completely through the crossing without stopping;

3 (v) For all drivers, failing to obey a traffic control device or
4 the directions of an enforcement officer at the crossing;

5 (vi) For all drivers, failing to negotiate a crossing because of
6 insufficient undercarriage clearance.

7 (b) A person is disqualified from driving a commercial motor
8 vehicle for a period of:

9 (i) Not less than sixty days if the driver is convicted of or is
10 found to have committed a first violation of a railroad-highway grade
11 crossing violation;

12 (ii) Not less than one hundred twenty days if the driver is
13 convicted of or is found to have committed a second railroad-highway
14 grade crossing violation in separate incidents within a three-year
15 period;

16 (iii) Not less than one year if the driver is convicted of or is
17 found to have committed a third or subsequent railroad-highway grade
18 crossing violation in separate incidents within a three-year period.

19 (9) Within ten days after suspending, revoking, or canceling a
20 commercial driver's license, the department shall update its records to
21 reflect that action. After suspending, revoking, or canceling a
22 nonresident commercial driver's privileges, the department shall notify
23 the licensing authority of the state that issued the commercial
24 driver's license.

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